


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Heather Mackenzie-Campbell, Audit Department

From:  Brent Johnson, General Counsel

Re: Applying Small Claims Filing Fee

Date: April 20, 2004

This memorandum is in response to your e-mail dated April 13, 2004, asking whether a small claims filing fee could be applied to the filing fee in a new civil case. As I understand the situation, there may be circumstances in small claims cases when a litigant may be required to file a civil case in order to accomplish service of process, because alternative service is not allowed under the Rules of Small Claims Procedure. The question is whether, as a matter of fairness, we can credit the amount paid for the small claims case when the plaintiff is required to file a new case in the civil division. In my opinion we cannot and should not credit the amount.

It has always been our position that, once a filing fee is paid, we do not have any discretion to determine how or where the filing fee is to be applied. Filing fees are determined by statute, and the accounts in to which filing fees are paid are determined by the Legislature. If a litigant erroneously pays a filing fee, we have historically taken the position that the litigant is not entitled to a refund of the amount, because the litigant is responsible for the error or choice that was made and the money has already been directed to accounts over which we have no control. The litigant bears the risk of an erroneous filing.¹ The same principle applies in this situation. We do not have the authority to waive filing fees, except as provided under statute for impecunious litigants, and we do not have authority to transfer funds, except as provided by statute. By "crediting" the fee already paid, we would essentially be engaged in either practice, but there is no authority for the practice. This is not the judiciary's money to control.

¹If the error was made by the court, a litigant could receive the money back. However, the money would be paid through Risk Management coverage and not from the filing fee fund.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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Although we cannot credit or transfer funds, we nevertheless have the ability to resolve this situation in favor of litigants who might face this dilemma. Through our rules of procedure we can either provide for alternative service in the small claims division, or we can provide for a transfer of a case from the small claims division to the civil division. If the rules of small claims or civil procedure provide for transfer of a case from small claims to civil, then the litigant would not need to initiate a new action, and a new filing fee would not be required. However, in the case of a transfer, we could require the litigant to pay the difference between the small claims filing fee and the civil filing fee, similar to what has been done in Rule 4 of the Utah Rules of Small Claims Procedure. Thus, although we cannot control the funds, we can control whether a litigant is required to pay a new filing fee.

Please let me know if you have any additional questions about this issue.